

**CORPORATE INTEGRITY AGREEMENT
BETWEEN THE
OFFICE OF INSPECTOR GENERAL
OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
BEEBE MEDICAL CENTER**

I. PREAMBLE

Beebe Medical Center ("Beebe") agrees to enter into this Corporate Integrity Agreement ("CIA") with the Office of Inspector General ("OIG") of the United States Department of Health and Human Services ("HHS") and to undertake all reasonable and necessary policies, procedures, and practices as set forth in this CIA to ensure compliance by Beebe, its physicians with privileges, employees, and other health care professionals with whom Beebe may choose to engage to act as third party billing or coding agents or consultants (hereinafter collectively referred to as "covered individuals" unless otherwise specified), with the requirements of Medicare, Medicaid and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) (hereinafter collectively referred to as the "Federal health care programs."). Beebe's compliance with the terms and conditions in this CIA shall constitute an element of its present responsibility with regard to participation in the Federal health care programs. Contemporaneously with this CIA, Beebe is entering into a Settlement Agreement with the United States, and this CIA is incorporated by reference into the Settlement Agreement.

II. TERM OF THE CIA

The period of the compliance obligations assumed by Beebe under this CIA shall be three (3) years from the effective date of this CIA (unless otherwise specified). The effective date of this CIA will be the date on which the final signatory of this CIA executes this CIA (the "effective date").

III. CORPORATE INTEGRITY OBLIGATIONS

Beebe shall establish a compliance program that includes the following elements.

A. Compliance Officer and Compliance Committee. Within ninety (90) days after the effective date of this CIA, Beebe shall appoint an individual to serve as Compliance Officer, who shall be responsible for developing and implementing policies, procedures, and practices designed to ensure compliance with the requirements set forth in this CIA and with the requirements of the Federal health care programs. The Compliance Officer shall be a member of senior management of Beebe, shall make regular (at least quarterly) reports regarding compliance matters directly to the CEO and/or to the Board of Directors of Beebe and shall be authorized to report to the Board of Directors at any time. The Compliance Officer shall be responsible for monitoring the day-to-day activities engaged in by Beebe to further its compliance objectives as well as any reporting obligations created under this CIA. In the event that a new Compliance Officer is appointed during the term of this CIA, Beebe shall notify OIG, in writing, within fifteen (15) days of such a change.

Beebe shall also appoint a Compliance Committee within ninety (90) days after the effective date of this CIA. The Compliance Committee shall, at a minimum, include the Compliance Officer and any other appropriate officers as necessary to meet the requirements of this CIA within the provider's corporate structure (e.g., senior representatives of each major department, such as billing, clinical, human resources, medical records, audit, and operations). The Compliance Officer shall chair the Compliance Committee and the Committee shall support the Compliance Officer in fulfilling his/her responsibilities.

B. Written Standards.

1. Code of Conduct. Within ninety (90) days of the effective date of this CIA, Beebe shall establish a Code of Conduct. The Code of Conduct, or an acceptable summary thereof, shall be distributed to all covered individuals within ninety (90) days of the effective date of this CIA. Beebe shall make the promotion of, and adherence to, the Code of Conduct an element in evaluating the performance of managers, supervisors, and all other employees. The Code of Conduct shall, at a minimum, set forth:

- a. Beebe's commitment to full compliance with all statutes, regulations, and guidelines applicable to the Federal health care programs, including its commitment to prepare and submit accurate

billings consistent with Federal health care program regulations and procedures or instructions otherwise communicated by the Health Care Financing Administration ("HCFA") (or other appropriate regulatory agencies) and/or its agents;

b. Beebe's requirement that all covered individuals shall be expected to comply with all statutes, regulations, and guidelines applicable to Federal health care programs and with Beebe's own Policies and Procedures (including the requirements of this CIA);

c. the requirement that all of Beebe's covered individuals shall be expected to report suspected violations of any statute, regulation, or guideline applicable to Federal health care programs or of Beebe's own Policies and Procedures;

d. the possible consequences to both Beebe and to any covered individual of failure to comply with all statutes, regulations, and guidelines applicable to the Federal health care programs and with Beebe's own Policies and Procedures or of failure to report such non-compliance; and

e. the right of all covered individuals to use the confidential disclosure program, as well as Beebe's commitment to confidentiality and non-retaliation with respect to disclosures.

Within ninety (90) days of the effective date of this CIA, each new covered individual shall certify, in writing, that he or she has received, read, understands, and will abide by Beebe's Code of Conduct or its summary. New covered individuals shall receive the Code of Conduct or a summary thereof and shall complete the required certification within two (2) weeks after the commencement of their employment or contract or within ninety (90) days of the effective date of this CIA, whichever is later. As to existing covered individuals, such certification shall take place within one hundred twenty (120) days of the effective date of this CIA.

Beebe will annually review the Code of Conduct and will make any necessary revisions. These revisions shall be distributed within thirty (30) days of initiating such a change. Employees and all other covered individuals shall certify on an annual basis that they have received, read, understand the summary of the Code of Conduct and will abide by the Code of Conduct.

2. Policies and Procedures. Beebe represents to OIG that it has developed and shall maintain throughout the term of this CIA written Policies and Procedures regarding the operation of its compliance program and its compliance with all federal and state health care statutes, regulations, and guidelines, including the requirements of the Federal health care programs. In addition to these general requirements, the Policies and Procedures shall specifically address:

- a. the obligation of every covered individual involved in coding the charts of patients who are transferred or discharged to know and understand all applicable Medicare statutes, regulations and rules pertaining to discharges and/or transfers;
- b. the obligation of every covered individual involved in billing Medicare, Medicaid or other Federal health care programs to know all applicable Medicare statutes, regulations and rules pertaining to discharges and/or transfers;
- c. the obligation of every covered individual involved in coding or billing for patients who are either transferred or discharged to another hospital to be familiar with and understand the basic reimbursement principles of the Prospective Payment System ("PPS"), including the distinction between the manner in which Medicare reimburses PPS hospitals for transfers and discharges;
- d. Beebe's responsibility to ensure that it understands when a transfer, as opposed to a discharge, for postacute care has occurred, and its responsibility to appropriately code each patient's bill based upon the discharge plan and status of the patient;
- e. Beebe's responsibility, upon learning that a discharged patient has received subsequent postacute care, for correcting the patient's original bill or submitting an adjustment bill notifying its fiscal intermediary that a transfer has occurred;
- f. Beebe's responsibility to ensure that all covered individuals involved in coding or billing for patients who are either discharged or transferred are familiar with and updated on the appropriate completion and submission of relevant claim forms;

- g. Beebe's responsibility to ensure that all covered individuals involved in coding or billing for patients who are either discharged or transferred are familiar with changes in the Diagnosis Related Group ("DRG") classification system, which is updated at least annually in the Federal Register; and
- h. Beebe's obligation to vest at least one of its employees with the responsibility to develop and monitor an internal system to ensure that medical charts reflect patients' appropriate destination upon discharge, and that such accurate information is conveyed to the appropriate personnel in the billing and coding departments.

In addition, the Policies and Procedures shall include disciplinary guidelines and methods for covered individuals to make disclosures or otherwise report on compliance issues to Beebe management through the Confidential Disclosure Program required by section III.E. Beebe shall assess and update as necessary the Policies and Procedures at least annually and more frequently, as appropriate. A summary of the Policies and Procedures will be provided to OIG in the Implementation Report, described below. The Policies and Procedures will be available to OIG upon request.

Within one hundred and twenty (120) days of the effective date of the CIA, the relevant portions of the Policies and Procedures shall be made available to all covered individuals. Compliance staff or supervisors should be available to explain any and all Policies and Procedures.

C. Training and Education.

1. General Training. Beebe shall annually provide at least one (1) hour of training to each covered individual regarding the following:

- a. CIA requirements;
- b. Beebe's Compliance Program (including the Policies and Procedures as they pertain to general compliance issues); and
- c. Beebe's Code of Conduct.

These training materials shall be made available to OIG, upon request. For the purposes of this section III.C, Beebe must make training available to physicians who are not

employees of Beebe, but need not require such physicians' attendance at the training sessions nor certification that those physicians received training.

New covered individuals shall receive the general training described above within thirty (30) days of the beginning of their employment or within ninety (90) days after the effective date of this CIA, whichever is later.

2. Specific Training. Beebe, on an annual basis, shall provide more specific training to each covered individual who is involved directly in the delivery of patient care and/or in the preparation or submission of claims for reimbursement for such care (including, but not limited to, coding and billing) for any Federal health care programs shall receive at least three (3) hours of training in addition to the general training required above. This training shall include the following subject matters:

- a. the submission of accurate bills for services rendered to Medicare and/or Medicaid patients;
- b. policies, procedures and other requirements applicable to the documentation of medical records;
- c. the personal obligation of each individual involved in the billing process to ensure that such billings are accurate;
- d. applicable reimbursement rules and statutes;
- e. the legal sanctions for improper billings;
- f. examples of proper and improper billing practices; and
- g. the Policies and Procedures enumerated in section III.B.2 above,.

As to physicians not employed by Beebe, the training set forth in this section III.C shall be made available on an annual basis. The training materials shall be made available to OIG, upon request. Persons providing the training must be knowledgeable about the subject area.

Affected new covered individuals shall receive this training within thirty (30) days of the beginning of their employment or agency or within ninety (90) days of the effective date of this CIA, whichever is later. If a new covered individual has any responsibility

for the delivery of patient care, the preparation or submission of claims and/or the assignment of procedure codes prior to completing this specific training, a covered individual who has completed the substantive training shall review all of the untrained person's work regarding these matters.

Every covered individual shall receive such specific training on an annual basis.

3. Certification. Each covered individual shall certify, in writing, that he or she has attended the required training. The certification shall specify the type of training received and the date received. Beebe shall retain the certifications, along with specific course materials. These shall be made available to OIG upon request.

D. Review Procedures. Beebe shall retain an entity, such as an accounting, auditing or consulting firm (hereinafter "Independent Review Organization"), to perform review procedures to assist Beebe in assessing the adequacy of its billing, submission and compliance practices pursuant to this CIA. This shall be an annual requirement and shall cover a twelve (12) month period. The Independent Review Organization must have expertise in the billing, coding, reporting and other requirements of the Federal health care programs from which Beebe seeks reimbursement. The Independent Review Organization must be retained to conduct the audit of the first year within ninety (90) days of the effective date of this CIA.

The Independent Review Organization will conduct two separate engagements. One will be an analysis of Beebe's inpatient submissions to the Federal health care programs to assist Beebe and OIG in determining compliance with all applicable statutes, regulations, and directives/guidance ("submissions engagement"). The second engagement will determine whether Beebe is in compliance with this CIA ("compliance engagement").

1. Submissions Engagement. The submissions engagement shall consist of a review of a statistically valid sample of claims that can be projected to the population of claims for the relevant period. The sample size shall be determined through the use of a probe sample. At a minimum, the full sample must be within a ninety (90) percent confidence level and a precision of twenty-five (25) percent. The probe sample must contain at least thirty (30) sample units and cannot be used as part of the full sample. Both the probe sample and the sample must be selected through random numbers. Beebe shall use OIG's Office of Audit Services Statistical Sampling Software, also known as "RAT-STATS," which is available through the Internet at "www.hhs.gov/progorg/oas/ratstat.html".

Each annual submissions engagement analysis shall include the following components in its methodology:

- a. Submissions Engagement Objective: A statement expressing clearly the objective intended to be achieved by the submissions engagement and the procedure or combination of procedures that will be applied to achieve the objective.
- b. Submissions Engagement Population: Identify the population, which is the group about which information is needed. Explain the methodology used to develop the population and provide the basis for this determination.
- c. Sources of Data: Provide a full description of the source of the information upon which the submissions engagement conclusions will be based, including the legal or other standards applied, documents relied upon, payment data, and/or any contractual obligations.
- d. Sampling Unit: Define the sampling unit, which is any of the designated elements that comprise the population of interest.
- e. Sampling Frame: Identify the sampling frame, which is the totality of the sampling units from which the sample will be selected.

The submissions engagement shall provide the Independent Review Organization's findings regarding:

- a. Beebe's submissions, billing and coding operation (including, but not limited to, the operation of the submissions and/or billing system, strengths and weaknesses of this system, internal controls, and the effectiveness of the system);
- b. whether Beebe is submitting accurate claims and/or cost reports for services billed to the Federal health care programs.
- c. Beebe's procedures to correct inaccurate submissions, billings or codings to the Federal health care programs;

d. the accuracy of the coding of hospital discharges and transfers;
and

f. the steps Beebe is taking to bring its operations into compliance or to correct problems identified by the audit;

2. Compliance Engagement. An Independent Review Organization shall also conduct a compliance engagement that shall provide findings as to whether Beebe's program, policies, procedures, and operations comply with the terms of this CIA. This engagement shall include section by section findings of the requirements of this CIA.

A complete copy of the Independent Review Organization's findings with respect to the submissions and compliance engagements shall be included in each of Beebe's Annual Reports to OIG, described below.

3. Verification/Validation. In the event that OIG reasonably determines that it is necessary to conduct an independent review to determine whether or the extent to which Beebe is complying with its obligations under this CIA, Beebe agrees to pay for the reasonable cost of any such review or engagement by OIG or any of its designated agents.

E. Confidential Disclosure Program. Within ninety (90) days after the effective date of this CIA, Beebe shall establish a Confidential Disclosure Program, which must include measures (e.g., a toll-free compliance telephone line) to enable covered individuals to disclose, to the Compliance Officer or some other person who is not in the reporting individual's chain of command, any identified issues or questions associated with Beebe's policies, practices or procedures with respect to the Federal health care programs, believed by the individual to be inappropriate. Beebe shall publicize the existence of the hotline (e.g., e-mail to employees or post hotline number in prominent common areas).

The Confidential Disclosure Program shall emphasize a non-retribution, non-retaliation policy, and shall include a reporting mechanism for anonymous, confidential communication. Upon receipt of a complaint, the Compliance Officer (or designee) shall gather the information in such a way as to elicit all relevant information from the individual reporting the alleged misconduct. The Compliance Officer (or designee) shall make a preliminary good faith inquiry into the allegations set forth in every disclosure to ensure that he or she has obtained all of the information necessary to determine whether a

further review should be conducted. For any disclosure that is sufficiently specific so that it reasonably: (1) permits a determination of the appropriateness of the alleged improper practice; and (2) provides an opportunity for taking corrective action, Beebe shall conduct an internal review of the allegations set forth in such a disclosure and ensure that proper follow-up is conducted.

The Compliance Officer shall maintain a confidential disclosure log, which shall include a record and summary of each allegation received, the status of the respective investigations, and any corrective action taken in response to the investigation.

F. Ineligible Persons.

1. Definition. For the purposes of this CIA, an "Ineligible Person" shall be any individual or entity who: (i) is currently excluded, suspended, debarred or otherwise ineligible to participate in the Federal health care programs; or (ii) has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the Federal health care programs after a period of exclusion, suspension, debarment, or ineligibility.

2. Screening Requirements. Beebe shall not hire, engage as contractors or grant staff privileges to any Ineligible Person. To prevent hiring or contracting with any Ineligible Person, Beebe shall screen all prospective employees and prospective contractors prior to engaging their services, and screen physicians prior to granting staff privileges, by (i) requiring applicants to disclose whether they are Ineligible Persons, and (ii) reviewing the General Services Administration's List of Parties Excluded from Federal Programs (available through the Internet at <http://www.arnet.gov/epl>) and the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at <http://www.dhhs.gov/oig>) (these lists and reports will hereinafter be referred to as the "Exclusion Lists").

3. Review and Removal Requirement. Within ninety (90) days of the effective date of this CIA, Beebe will review its list of current employees, contractors and physicians with staff privileges against the Exclusion Lists. Thereafter, Beebe will review the list once annually. If Beebe has notice that an employee, agent, or physician has become an Ineligible Person, Beebe will remove such person from responsibility for, or involvement with, Beebe's business operations related to the Federal health care programs and shall remove such person from any position for which the person's salary or the items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with federal

funds at least until such time as the person is reinstated into participation in the Federal health care programs.

4. Pending Charges and Proposed Exclusions. If Beebe has notice that an employee, contractor or physician is charged with a criminal offense related to any Federal health care program, or is suspended or proposed for exclusion during his or her employment or contract with Beebe, Beebe shall take all appropriate actions to ensure that the responsibilities of that employee, contractor or physician have not and shall not adversely affect the quality of care rendered to any beneficiary, patient or resident, or the accuracy of any claims submitted to any Federal health care program.

G. Notification of Proceedings. Within thirty (30) days of discovery, Beebe shall notify OIG, in writing, of any ongoing investigation or legal proceeding conducted or brought by a governmental entity or its agents involving an allegation that Beebe has committed a crime or has engaged in fraudulent activities or any other knowing misconduct. This notification shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding. Beebe shall also provide written notice to OIG within thirty (30) days of the resolution of the matter, and shall provide OIG with a description of the findings and/or results of the proceedings, if any.

H. Reporting.

1. Reporting of Overpayments. If, at any time, Beebe identifies or learns of any billing, coding or other policies, procedures and/or practices that result in an overpayment, Beebe shall notify the payor (e.g., Medicare fiscal intermediary or carrier) within thirty (30) days of discovering the overpayment and take remedial steps within sixty (60) days of discovery (or such additional time as may be agreed to by the payor) to correct the problem, including preventing the underlying problem and the overpayments from recurring. If the overpayment is discovered as the result of any of the activities required by this CIA, the notice to the payor shall include:

- a. a statement that the refund is being made pursuant to this CIA;
- b. a description of the complete circumstances surrounding the overpayment;
- c. the methodology by which the overpayment was determined;

- d. the amount of the overpayment;
- e. any claim-specific information used to determine the overpayment (e.g., beneficiary health insurance number, claim number, service date, and payment date);
- f. the provider identification number under which the repayment is being made;
- g. the cost reporting period; and
- h. any applicable Overpayment Refund Form provided and required by the payor.

2. Reporting of Material Deficiencies. If Beebe determines that there is a material deficiency, Beebe shall notify the OIG within thirty (30) days of discovering the material deficiency. If the material deficiency results in an overpayment, the report to OIG shall be made at the same time as the report to the payor and shall include all of the information required by section III.H.1 plus: (i) the payor's name, address, and contact person where the overpayment was sent; and (ii) the date of the check and identification number (or electronic transaction number) on which the overpayment was repaid. Regardless of whether the material deficiency resulted in an overpayment, the report to OIG shall include:

- a. a complete description of the material deficiency, including the relevant facts, persons involved, and legal and program authorities;
- b. Beebe's actions to correct the material deficiency; and
- c. any further steps Beebe plans to take to address such material deficiency and prevent it from recurring.

3. Definition of "Overpayment." For the purposes of this CIA, an "overpayment" shall mean the amount of money Beebe has received in excess of the amount due and payable under the Federal health care programs' statutes, regulations or program directives, including carrier and intermediary instructions.

4. Definition of "Material Deficiency." For the purposes of this CIA, a "material deficiency" means anything that involves: (i) a substantial overpayment

relating to any Federal health care program; (ii) a matter that a reasonable person would consider a potential violation of criminal, civil, or administrative laws applicable to any Federal health care program; or (iii) a violation of the obligation to provide items or services of a quality that meets professionally recognized standards of health care where such violation has occurred in one or more instances that presents an imminent danger to the health, safety, or well-being of a Federal health care program beneficiary or places the beneficiary unnecessarily in high-risk situations. A material deficiency may be the result of an isolated event or a series of occurrences.

IV. NEW LOCATIONS

In the event that Beebe purchases or establishes new business units after the effective date of this CIA, Beebe shall notify OIG of this fact within thirty (30) days of the date of purchase or establishment. This notification shall include the location of the new operation(s), phone number, fax number, Federal health care program provider number(s) (if any), and the corresponding payor(s) (contractor specific) that has issued each provider number. All covered individuals at such locations shall be subject to the requirements in this CIA that apply to new covered individuals (e.g., completing certifications and undergoing training).

V. IMPLEMENTATION AND ANNUAL REPORTS

A. Implementation Report. Within one hundred and fifty (150) days after the effective date of this CIA, Beebe shall submit a written report to OIG summarizing the status of its implementation of the requirements of this CIA. This Implementation Report shall include:

1. the name, address, phone number and position description of the Compliance Officer required by section III.A;
2. the names and positions of the members of the Compliance Committee required by section III.A;
3. a copy of Beebe's Code of Conduct required by section III.B.1;
4. the summary of the Policies and Procedures required by section III.B.2;
5. a description of the training programs required by section III.C, including a description of the targeted audiences and a schedule of training sessions;

6. a certification by the Compliance Officer that:

- a. the Policies and Procedures required by section III.B have been developed, are being implemented, and have been made available to all covered individuals;
- b. all covered individuals have completed the Code of Conduct certification required by section III.B.1; and
- c. where applicable, all covered individuals have completed the training and executed the certification required by section III.C.

7. a description of the Confidential Disclosure Program required by section III.E;

8. the identity of the Independent Review Organization(s) and the proposed start and completion date of the first audit;

9. a summary of personnel actions taken pursuant to section III.F; and

10. a list of all of Beebe's locations (including locations and mailing addresses); the corresponding name under which each location is doing business, the corresponding phone numbers and fax numbers, each location's Federal health care program provider identification number(s), and the name, address, and telephone number of the payor (specific contractor) that issued each provider identification number.

B. Annual Reports. Beebe shall submit to OIG an Annual Report with respect to the status and findings of its compliance activities. The Annual Reports shall include:

1. any change in the identity or position description of the Compliance Officer and/or members of the Compliance Committee described in section III.A;

2. a certification by the Compliance Officer that:

- a. all covered individuals have completed the annual Code of Conduct certification required by section III.B.1; and
- b. all covered individuals have completed the training and executed

the certification required by section III.C.

3. notification of any changes or amendments to the Policies and Procedures required by section III.B and the reasons for such changes (e.g., change in contractor policy);

4. a complete copy of the report prepared pursuant to the Independent Review Organization's submissions and compliance engagement, including a copy of the methodology used;

5. Beebe's response/corrective action plan to any issues raised by the Independent Review Organization;

6. a summary of material deficiencies reported throughout the course of the previous twelve (12) months pursuant to section III.H;

7. a report of the aggregate overpayments that have been returned to the Federal health care programs that were discovered as a direct or indirect result of implementing this CIA. Overpayment amounts should be broken down into the following categories: Medicare, Medicaid (report each applicable state separately) and other Federal health care programs;

8. a copy of the confidential disclosure log required by section III.E;

9. a description of any personnel action (other than hiring) taken by Beebe as a result of the obligations in section III.F, and the name, title, and responsibilities of any person that falls within the ambit of section III.F.4, and the actions taken in response to the obligations set forth in that section;

10. a summary describing any ongoing investigation or legal proceeding conducted or brought by a governmental entity involving an allegation that Beebe has committed a crime or has engaged in fraudulent activities, which have been reported pursuant to section III.G. The statement shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation, legal proceeding or requests for information;

11. a corrective action plan to address all the probable violations of law identified in section III.H; and

12. a description of all changes to the most recently provided list (as updated) of Beebe's locations (including locations and mailing addresses), the corresponding name under which each location is doing business, the corresponding phone numbers and fax numbers, each location's Federal health care program provider identification number(s), and the name, address, and telephone number of the payor (specific contractor) that issued each provider identification number.

The first Annual Report shall be received by the OIG no later than one year and thirty (30) days after the effective date of this CIA. Subsequent Annual Reports shall be submitted no later than the anniversary date of the due date of the first Annual Report.

C. Certifications. The Implementation Report and Annual Reports shall include a certification by the Compliance Officer under penalty of perjury, that: (1) Beebe is in compliance with all of the requirements of this CIA, to the best of his or her knowledge; and (2) the Compliance Officer has reviewed the Report and has made reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate and truthful.

VI. NOTIFICATIONS AND SUBMISSION OF REPORTS

Unless otherwise stated in writing subsequent to the effective date of this CIA, all notifications and reports required under this CIA shall be submitted to each of the entities listed below by certified mail, return receipt requested:

OIG:

Civil Recoveries Branch - Compliance Unit
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
Cohen Building, Room 5527
330 Independence Avenue, S.W.
Washington, DC 20201
Phone 202.619.2078
Fax 202.205.0604

Beebe Medical Center:

Jeffrey M. Fried, FACHE
President and CEO
Beebe Medical Center
424 Savannah Road
Lewes, DE 19958-0226
Phone 302.645.3537
Fax 302.645.3405

With a Copy to:

E. James Monihan, FACHE
Vice President, Administration/CCO
424 Savannah Road
Lewes, DE 19958
Phone 302.645.3225
Fax 302.645.3266

VII. OIG INSPECTION, AUDIT AND REVIEW RIGHTS

In addition to any other rights OIG may have by statute, regulation, or contract, OIG or its duly authorized representative(s), may examine Beebe's books, records, and other documents and supporting materials and/or conduct an onsite review of Beebe's operations for the purpose of verifying and evaluating: (a) Beebe's compliance with the terms of this CIA; and (b) Beebe's compliance with the requirements of the Federal health care programs in which it participates. The documentation described above shall be made available by Beebe to OIG or its duly authorized representative(s) at all reasonable times for inspection, audit or reproduction. Furthermore, for purposes of this provision, OIG or its duly authorized representative(s) may interview any of Beebe's employees and other covered individuals who consent to be interviewed at the person's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the employee or other covered individuals and OIG. Beebe agrees to assist OIG in contacting and arranging interviews with such employees and other covered individuals upon OIG's request. Beebe's employees and other covered individuals may elect to be interviewed with or without a representative of Beebe present.

VIII. DOCUMENT AND RECORD RETENTION

Beebe shall maintain for inspection all documents and records relating to reimbursement from the Federal health care programs or to compliance with this CIA, one year longer than the term of this CIA (or longer if otherwise required by law).

IX. DISCLOSURES

Subject to HHS's Freedom of Information Act ("FOIA") procedures, set forth in 45 C.F.R. Part 5, OIG shall make a reasonable effort to notify Beebe prior to any release by OIG of information submitted by Beebe pursuant to its obligations under this CIA and identified upon submission by Beebe as trade secrets, commercial or financial information and privileged and confidential under the FOIA rules. Beebe shall refrain from identifying any information as trade secrets, commercial or financial information as privileged and confidential that does not meet the criteria for exemption from disclosure under FOIA.

X. BREACH AND DEFAULT PROVISIONS

Beebe is expected to fully and timely comply with all of the obligations herein throughout the term of this CIA or other time frames herein agreed to.

A. Stipulated Penalties for Failure to Comply with Certain Obligations. As a contractual remedy, Beebe and OIG hereby agree that failure to comply with certain obligations set forth in this CIA may lead to the imposition of the following monetary penalties (hereinafter referred to as "Stipulated Penalties") in accordance with the following provisions.

1. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day, beginning one hundred and twenty (120) days after the effective date of this CIA and concluding at the end of the term of this CIA, Beebe fails to have in place any of the following:

1. a Compliance Officer;
2. a Compliance Committee;
3. a written Code of Conduct;
4. written Policies and Procedures;

5. an annual training program; and
6. a Confidential Disclosure Program.

2. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Beebe fails to meet any of the deadlines to submit the Implementation Report or the Annual Reports to OIG.

3. A Stipulated Penalty of \$2,000 (which shall begin to accrue on the date the failure to comply began) for each day Beebe:

- a. hires, enters into a contract with, or grants staff privileges to an Ineligible Person after that person has been identified as being listed by a federal agency as excluded, debarred, suspended or otherwise ineligible for participation in the Medicare, Medicaid or any other Federal health care program (as defined in 42 U.S.C. §1320a-7b(f)) (this Stipulated Penalty shall not be demanded for any time period during which Beebe can demonstrate that it did not discover the person's exclusion or other ineligibility after making a reasonable inquiry (as described in section III.F) as to the status of the person);
- b. employs, contracts with, or grants staff privileges to an Ineligible Person and that person: (i) has responsibility for, or involvement with, Beebe's business operations related to the Federal health care programs or (ii) is in a position for which the person's salary or the items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with federal funds (this Stipulated Penalty shall not be demanded for any time period during which Beebe can demonstrate that it did not discover the person's exclusion or other ineligibility after making a reasonable inquiry (as described in section III.F) as to the status of the person); or
- c. employs, contracts with, or grants staff privileges to a person who: (i) has been charged with a criminal offense related to any Federal health care program, or (ii) is suspended or proposed for exclusion, and that person has responsibility for, or involvement with, Beebe's business operations related to the Federal health care programs (this Stipulated Penalty shall not be demanded for any time period before ten (10) days after Beebe received notice of the relevant matter or after the resolution of the matter).

3. A Stipulated Penalty of \$2,000 (which shall begin to accrue on the date

the failure to comply began) for each day Beebe employs or contracts with, or grants staff privileges to, an individual or entity after that individual or entity has been identified as being listed by a federal agency as excluded, debarred, suspended or otherwise ineligible for participation in the Medicare, Medicaid or any other Federal health care program (as defined in 42 U.S.C. § 1320a-7b(f)). This Stipulated Penalty shall not be demanded if Beebe can demonstrate that it did not discover the individual's exclusion or other ineligibility after making a reasonable inquiry (as described in section III.F) as to the current or potential status of the employee, consultant, or contractor, and Beebe terminated the employment or contract of such individual immediately upon notice of ineligibility.

4. A Stipulated Penalty of \$1,500 (which shall begin to accrue on the date Beebe fails to grant access) for each day Beebe fails to grant access to the information or documentation as required in section V of this CIA.

5. A Stipulated Penalty of \$1,000 (which shall begin to accrue ten (10) days after the date that OIG provides notice to Beebe of the failure to comply) for each day Beebe fails to comply fully and adequately with any obligation of this CIA. In its notice to Beebe, OIG shall state the specific grounds for its determination that Beebe has failed to comply fully and adequately with the CIA obligation(s) at issue.

B. Payment of Stipulated Penalties.

1. Demand Letter. Upon a finding that Beebe has failed to comply with any of the obligations described in section X.A and determining that Stipulated Penalties are appropriate, OIG shall notify Beebe by personal service or certified mail of (a) Beebe's failure to comply; and (b) OIG's exercise of its contractual right to demand payment of the Stipulated Penalties (this notification is hereinafter referred to as the "Demand Letter").

Within fifteen (15) days of the date of the Demand Letter, Beebe shall either (a) cure the breach to OIG's satisfaction and pay the applicable Stipulated Penalties; or (b) request a hearing before an HHS administrative law judge ("ALJ") to dispute OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth below in section X.D. In the event Beebe elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until Beebe cures, to OIG's satisfaction, the alleged breach in dispute. Failure to respond to the Demand Letter in one of these two manners within the allowed time period shall be considered a material breach of this CIA and shall be grounds for exclusion under section X.C.

2. Timely Written Requests for Extensions. Beebe may submit a timely written request for an extension of time to perform any act or file any notification or report required by this CIA. Notwithstanding any other provision in this section, if OIG grants the timely written request with respect to an act, notification, or report, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until one (1) day after Beebe fails to meet the revised deadline as agreed to by the OIG-approved extension. Notwithstanding any other provision in this section, if OIG denies such a timely written request, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until two (2) business days after Beebe receives OIG's written denial of such request. A "timely written request" is defined as a request in writing received by OIG at least five (5) business days prior to the date by which any act is due to be performed or any notification or report is due to be filed.

3. Form of Payment. Payment of the Stipulated Penalties shall be made by certified or cashier's check, payable to "Secretary of the Department of Health and Human Services," and submitted to OIG at the address set forth in section VI.

4. Independence from Material Breach Determination. Except as otherwise noted, these provisions for payment of Stipulated Penalties shall not affect or otherwise set a standard for OIG's determination that Beebe has materially breached this CIA, which decision shall be made at the OIG's discretion and governed by the provisions in section X.C, below.

C. Exclusion for Material Breach of this CIA

1. Notice of Material Breach and Intent to Exclude. OIG and Beebe agree that a material breach of this CIA by Beebe constitutes an independent basis for Beebe's exclusion from participation in the Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)). Upon a determination by OIG that Beebe has materially breached this CIA and that exclusion should be imposed, OIG shall notify Beebe by certified mail of (a) Beebe's material breach; and (b) OIG's intent to exercise its contractual right to impose exclusion (this notification is hereinafter referred to as the "Notice of Material Breach and Intent to Exclude").

2. Opportunity to Cure. Beebe shall have thirty five (35) days from the date of the Notice of Material Breach and Intent to Exclude Letter to demonstrate to OIG's satisfaction that:

- a. Beebe is in full compliance with this CIA;
- b. the alleged material breach has been cured; or
- c. the alleged material breach cannot be cured within the 35-day period, but that: (i) Beebe has begun to take action to cure the material breach; (ii) Beebe is pursuing such action with due diligence; and (iii) Beebe has provided to OIG a reasonable timetable for curing the material breach.

3. Exclusion Letter. If at the conclusion of the thirty-five (35) day period, Beebe fails to satisfy the requirements of section X.C.2, OIG may exclude Beebe from participation in the Federal health care programs. OIG will notify Beebe in writing of its determination to exclude Beebe (this letter shall be referred to hereinafter as the "Exclusion Letter"). Subject to the Dispute Resolution provisions in section X.D, below, the exclusion shall go into effect thirty (30) days after the date of the Exclusion Letter. The exclusion shall have national effect and will also apply to all other federal procurement and non-procurement programs. If Beebe is excluded under the provisions of this CIA, Beebe may seek reinstatement pursuant to the provisions at 42 C.F.R. §§ 1001.3001-.3004.

4. Material Breach. A material breach of this CIA means:

- a. a failure by Beebe to report a material deficiency, take corrective action and pay the appropriate refunds, as provided in section III.H;
- b. repeated or flagrant violations of the obligations under this CIA, including, but not limited to, the obligations addressed in section X.A of this CIA;
- c. a failure to respond to a Demand letter concerning the payment of Stipulated Penalties in accordance with section X.B above; or
- d. a failure to retain and use an Independent Review Organization for review purposes in accordance with section III.D.

D. Dispute Resolution

1. Review Rights. Upon OIG's delivery to Beebe of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under the obligation of this CIA, Beebe shall be afforded certain review rights comparable to the ones that are provided in 42 U.S.C. §1320a-7(f) and 42 C.F.R. Part 1005 as if they applied to the Stipulated Penalties or exclusion sought pursuant to this CIA. Specifically, OIG's determination to demand payment of Stipulated Penalties or to seek exclusion shall be subject to review by an ALJ and, in the event of an appeal, the Departmental Appeals Board ("DAB"), in a manner consistent with the provisions in 42 C.F.R. §§ 1005.2-1005.21. Notwithstanding the language in 42 C.F.R. § 1005.2(c), the request for a hearing involving Stipulated Penalties shall be made within fifteen (15) days of the date of the Demand Letter and the request for a hearing involving exclusion shall be made within thirty (30) days of the date of the Exclusion Letter.

2. Stipulated Penalties Review. Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for Stipulated Penalties under this CIA shall be (a) whether Beebe was in full and timely compliance with the obligations of this CIA for which OIG demands payment; and (b) the period of noncompliance. Beebe shall have the burden of proving its full and timely compliance and the steps taken to cure the noncompliance, if any. If the ALJ finds for OIG with regard to a finding of a breach of this CIA and orders Beebe to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable twenty (20) days after the ALJ issues such a decision notwithstanding that Beebe may request review of the ALJ decision by the DAB.

3. Exclusion Review. Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion based on a material breach of this CIA shall be: (a) whether Beebe was in material breach of this CIA; (b) whether such breach was continuing on the date of the Exclusion Letter; and (c) the alleged material breach cannot be cured within the thirty-five (35) day period, but that (i) Beebe has begun to take action to cure the material breach; (ii) Beebe is pursuing such action with due diligence; and (iii) Beebe has provided to OIG a reasonable timetable for curing the material breach..

For the purposes of the exclusion herein, exclusion shall take effect only after an ALJ decision that is favorable to OIG. Beebe's election of its contractual right to appeal to the DAB shall not abrogate OIG's authority to exclude Beebe upon the issuance of the ALJ's decision. If the ALJ sustains the determination of OIG and determines that

exclusion is authorized, such exclusion shall take effect twenty (20) days after the ALJ issues such a decision, notwithstanding that Beebe may request review of the ALJ decision by the DAB.

4. Finality of Decision. The review by an ALJ or DAB provided for above shall not be considered to be an appeal right arising under any statutes or regulations. Consequently, the parties to this CIA agree that the DAB's decision (or the ALJ's decision if not appealed) shall be considered final for all purposes under this CIA and Beebe agrees to waive any right it may have to appeal the decision administratively, judicially or otherwise seek review by any court or other adjudicative forum.

XI. EFFECTIVE AND BINDING AGREEMENT

Consistent with the provisions in the Settlement Agreement pursuant to which this CIA is entered, and into which this CIA is incorporated, Beebe and OIG agree as follows:

- A. This CIA shall be binding on the successors, assigns and transferees of Beebe;
- B. This CIA shall become final and binding on the date the final signature is obtained on the CIA;
- C. Any modifications to this CIA shall be made with the prior written consent of OIG and Beebe; and
- D. The undersigned Beebe signatories represent and warrant that they are authorized to execute this CIA. The undersigned OIG signatory represents that he is signing this CIA in his official capacity and that he is authorized to execute this CIA.

ON BEHALF OF BEEBE MEDICAL CENTER:

John D. Zup

4/21/00
DATE

DATE

**ON BEHALF OF THE OFFICE OF INSPECTOR GENERAL
OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES:**



LEWIS MORRIS

Assistant Inspector General for Legal Affairs

Office of Inspector General

U. S. Department of Health and Human Services

9/28/02
DATE